SBCivil Writ Petition No.2490/2003

Smt.Vidhya Devi
Vs.
State of Rajasthan & Ors.

Date of Order :: 12th September, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Kuldeep Mathur, for the petitioner.
Mr. Shyam Ladrecha, Addl.Govt.Advocate.

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The Government of Rajasthan under the Rajasthan Advance Hazard Fund Rules, 1970 (hereinafter referred to as “the Rules of 1970”) created a fund to satisfy the advance granted by Government of Rajasthan to its employees under House Building Advance Rules or Conveyance Advance Rules in hazardous circumstances. The husband of the petitioner was a member of the fund referred above and during his lifetime he drew certain advances. As a consequences to an unfortunate accident, he died on 23.2.1994 while holding the post of Upper Division Clerk in Public Works Department, IGNP Division, Suratgarh. The pension case of the petitioner was not decided by the respondents on the count that no contribution as required under the Rules of 1970 was deducted from the pay bills of the husband of the petitioner for the months of June, 1992; October, 1992; and March, 1993. The respondents also not made payment of gratuity and other ancillary benefits to the petitioner. Though no order was given

in writing but the respondents, according to the petitioner, decided to recover the entire advance from the retiral and pensionary benefits accruing to the petitioner being widow of a deceased government servant. In the circumstances the petitioner submitted a notice to the respondents for release of family pension and other dues but of no consequence. Hence this petition for writ is preferred praying as under:-

> "(i)the respondent Department may kindly be directed to finalize petitioner's case for payment of family pension and gratuity along with an interest at the rate of 18% per month;
>
> (ii)the respondent department may kindly be restrained from affecting any recovery from the family pension, gratuity and other retiral benefits to be paid to the petitioner."

A reply to the writ petition is filed on behalf of the respondents stating therein that husband of the petitioner himself was responsible to deduct the contribution for the hazard fund under the Rules of 1970 but he did not pay such contribution, therefore, in accordance with the said Rules the petitioner is not entitled to get the advance satisfied.

In rejoinder, petitioner has denied the fact that her husband was having any responsibility to deduct the contribution against the fund concerned. It is pointed out by counsel for the petitioner that the Executive Engineer, Public Works Department, IGNP Division, Suratgarh by communication dated 24.5.1995 (Anx.3) named the persons who were responsible to deduct the contribution from pay bill.

Heard counsel for the parties.

Under the Rules of 1970 mode of recovery of the contribution is prescribed under Rule 7, according to that the contribution is required to be recovered from monthly pay bill of a government servant by drawing and disbursing officer as envisaged in Rule 5. The contribution recovered is also required to be checked by the Department and a difference if any is required to be intimated to the drawing officer either for making short recovery from the pay of loanee or for excess recovery. The husband of the petitioner being Upper Division Clerk was not at all the drawing and disbursing authority. The drawing and disbursing authority failed to discharge his pious duty as prescribed under Rule 7 of the Rules of 1970 and for that the petitioner, a widow of a deceased government servant, cannot be put to a loss. It is further pertinent to note that clause(ii) of sub-rule(2) of Rule 9 of the Rules of 1970 prescribes a mode for

recoveries of outstanding contribution from the last claim of deceased government servant. The relevant portion of the Rule referred above, reads as under:-

> "(ii)On receipt of an intimation about outstanding amount of advance/loan from the authority referred to in sub-rule(2)(i) of this rule, the Director shall, after examining the account of deceased loanee, arrange to pay the outstanding balance of advance/loan out of the Fund by carrying out necessary adjustment in Government. He would, however, ensure that the complete recovery on account of contributions towards Fund has been made before finalising such claims. <u>The outstanding contribution, if any, shall be recoverable from the last claim of the deceased Government servant</u>."

The provision referred above in quite unambiguous terms prescribes that the outstanding contribution if any shall be recoverable from the last claim of the deceased government servant. In view of it the respondents may recover the outstanding contribution to the fund from the last claim of husband of the petitioner but not the entire advance. The act of the respondents while denying family pension and to effect recovery of the advance from the last claim of the deceased government servant, therefore, is illegal.

Accordingly, this petition for writ is allowed. The respondents are directed to make payment of family pension to the petitioner and all other claims of her late husband within a period of three months from today with interest @ 8% per annum. The respondents may recover the outstanding contribution to the fund from the last claim of the husband of the petitioner while making payment of pensionary benefits and other dues.

No order to cost.

(GOVIND MATHUR),J.

kkm/ps.